

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF NURSING

In the Matter of the Nursing  
Licenses of Richard D. Brown  
R.N. License No. 121891-4  
L.P.N. License No. 39352-6

FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION

This matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on Thursday, May 1, 1997, at 9:30 a.m. Natalie E. Hudson, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Executive Director of the Minnesota Board of Nursing ("the Board"). There was no appearance by or on behalf of the Respondent, Richard D. Brown, HC87 Box 5410, Merrifield, Minnesota 56465. The record with respect to this matter closed on May 6, 1997, upon receipt of a letter and affidavit from the Board.

NOTICE

This Report is a recommendation, not a final decision. The Board of Nursing will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Joyce M. Schowalter, Executive Director, Minnesota Board of Nursing, 2700 University Avenue West, Suite 108, St. Paul, Minnesota 55104, telephone number (612) 642-0567, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this matter is whether or not disciplinary action should be taken against the R.N. and L.P.N. licenses of the Respondent, Richard D. Brown, on the grounds set forth in Minn. Stat. §§ 148.261 and 148.262.

Based upon all of the files, records, and proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

1. The Notice of and Order for Prehearing Conference and Hearing in this matter was served upon the Respondent by first-class mail at HC87 Box 5410, Merrifield, Minnesota 56465, on March 20, 1997. That address was the last known address for the Respondent according to the records of the Board of Nursing. The envelope containing the Notice of and Order for Prehearing Conference and Hearing was not returned to the Board office by the U.S. Postal Service.

2. The Notice of and Order for Prehearing Conference and Hearing served on the Respondent contained the following informational notice in the paragraph ordering the prehearing conference:

Respondent is urged to attend; failure to do so may prejudice Respondent's rights in this proceeding and any subsequent proceedings related to this matter, may result in the allegations contained herein being taken as true, and may be the basis for disciplinary action against Respondent.

3. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. The Respondent did not appear at the prehearing conference scheduled for May 1, 1997, or have an appearance made on his behalf. He also did not contact the Administrative Law Judge between May 1, 1997, and the date on which this Report was issued.

4. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default. Pursuant to Minn. R. 1400.6000 (1995), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Minnesota Board of Nursing and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 148.261, and 214.10 (1994).

2. The Board of Nursing has given proper notice of the prehearing conference in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Minnesota Board of Nursing has the authority to take disciplinary action against registered nurses and licensed practical nurses, including the Respondent, under Minn. Stat. §§ 148.261 and 148.262 (1994).

4. Minn. Stat. § 148.261, subd. 1 (1994), provides, in pertinent part, as follows:

The board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice professional or practical nursing under sections 148.171 to 148.285, or to [sic] otherwise discipline a licensee or applicant as described in section 148.262. The following are grounds for disciplinary action:

(8) Actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition.

\* \* \*

(10) Engaging in any unethical conduct, including, but not limited to, conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient. Actual injury need not be established under this clause.

(11) Engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient, or engaging in sexual exploitation of a patient or former patient.

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(21) Making a false statement or knowingly providing false information to the board, failing to make reports as required by section 148.263, or failing to cooperate with an investigation of the board as required by section 148.265.

5. Pursuant to Minn. Stat. § 148.265 (1994), “[a] nurse who is the subject of an investigation by or on behalf of the board [of nursing] shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or other records in the nurse’s possession, as reasonably requested by the board, to assist the board in its investigation and to appear at conferences and hearings scheduled by the board . . . .”

6. The Respondent is in default herein under Minn. R. 1400.6000 (1995) as a result of his failure to appear at the prehearing conference.

7. Under Minn. R. 1400.6000 (1995), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing may be taken as true or deemed proved without further evidence when a party fails to appear at the hearing.

8. Under Minn. R. 1400.7300, subp. 5 (1995), the Board of Nursing has the burden of establishing by a preponderance of the evidence the statutory violations charged.

9. As a result of the Respondent’s default, the Board of Nursing has met its burden of proof.

10. The Respondent's conduct as set forth in the Notice of and Order for Prehearing Conference and Hearing and incorporated herein pursuant to Finding of Fact No. 4 violates Minn. Stat. §§ 148.261, subd. 1(8), (10), (11), and (21) and 148.265 (1994).

11. As a result of the statutory violations set forth in Conclusion No. 10, the Board of Nursing has the power to deny, suspend, revoke, or restrict the Respondent's license, or to otherwise discipline him as set forth in Minn. Stat. § 148.262 (1994).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Board of Nursing take disciplinary action against the R.N. and L.P.N. licenses of the Respondent, Richard D. Brown.

Dated this \_\_\_\_\_ day of May, 1997

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Default.